IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY THIRD DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 7035 of 1999

Between:

M. Devasahayam, s/o. Yesuratnam, Hindu,

Occ: Asst.Labour Officer(Retd.), R/o. Kothapalem Panchayat, Chinaganjam Mandal, Prakasam District.

..... PETITIONER

AND

1. The District Collector, Prakasam District.

2. The Mandal Revenue Officer, Chinaganjam Mandal,

Prakasam District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more particularly one in the nature of Writ of Mandamus declaring the inaction of the respondents not to issue the patta for the house of petitioner Assessment No.196 house situated at Kothapalem Panchayat, Chinaganjam Mandal, Prakasam District, is arbitrary, illegal, against the natural justice and consequently direct the respondents to issue patta to the petitioner for assessment No.196 house situated at Kothapalem Panchayat, Chinaganjam Mandal, Prakasam District.

Counsel for the Petitioner : MRS. K.Malleswari

Counsel for the Respondents : GP FOR REVENUE (G)

The Court made the following :

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O R D E R :

The petitioner is a retired Assistant Labour Officer. It appears, the father of the petitioner, allegedly on the advise of the Revenue officials, occupied the land in Survey No.448/1 of Chinnaganjam village in 1969 and constructed a house. After his death, it is alleged the petitioner and his mother have been in occupation of the land. The petitioner also alleges that the Gram Panchayat is collecting House tax from him. The petitioner made a representation to the respondents for grant if D-Form patta, in vain. The Mandal Revenue Inspector appears to have objected the assignment of land to the petitioner on the ground that it is classified as burial ground poramboke. The petitioner contends that the Mandal Revenue Officer issued possession certificate to more than hundred people for construction of pucca houses under various housing schemes, but only in the case of petitioner he is taking such objection. Therefore, he filed the present writ petition seeking a direction to the respondents to issue patta to the petitioner.

In the counter affidavit filed by the Mandal Revenue Officer, it is stated that the petitioner is a retired Government employee having monthly income of Rs.3,800/-, and therefore, he is not eligible for assignment. He would not fall within the category of landless and poor and hence D-Form patta cannot be granted in respect of burial ground. The Mandal Revenue Inspector recommended for issue of possession certificate on collecting the market value, and accordingly, the Sub-Registrar, Ammanabrolu was addressed for giving on payment of market value of the land. The allegation of the petitioner that the respondents have not taken any action on the complaint of the petitioner is denied.

Learned counsel for the petitioner vehemently contends that though it is a burial ground, the petitioner and others have constructed houses and have been living on the land, that the petitioner is willing to pay the market value of the land, and

therefore, the respondents may be directed to give possession certificate duly collecting the market value. These contentions are refuted by the learned Assistant Government Pleader for
Revenue (G).

Andhra Pradesh Board Standing Order(BSO) 15 deals with grant of lands for occupation subject to payment of assessment. Whereas BSO 24 deals with alienation of land by the Government for market value. In either case, it is not competent for the Government or any Revenue official to assign or alienate certain classes of lands. For instance, under BSO 15(4) tank beds, fore-shore of tank beds, lands containing topes and any other types of lands, which are required for any public or any special purposes necessary for the provision of amenities to the community or connected with the development of a village, cannot be assigned. Similarly, under BSO 21 the lands meant for community purposes cannot be assigned or alienated for housing purpose. The land in Survey No.448/1A of Chinnaganjam village is admittedly classified as burial ground poramboke. Therefore, as rightly pointed out by the learned Assistant Government Pleader, the respondents could not have assigned the land by issuing D-Form patta. Secondly, if the land is to be alienated to the petitioner, who is allegedly in possession of the land, the District Collector has to take appropriate decision in the matter whether the land earmarked for burial ground can be allowed to be assigned for house site pattas. Furthermore, as per Section 58 of the Andhra Pradesh Panchayat Raj Act,1994, grazing grounds, threashing floors, burning and burial grounds, cattle stands, cart-stands and topes shall vest in the Gram Panchayat unless they are required by Government for any specific purpose. When the Government has already classified the lands for specific purpose for being used as burial ground, it is doubtful whether the District Collector or the Government could have assigned/alienate the land earmarked as burial ground. This Court, however, hastens to add that these are the matters to be considered by the District Collector keeping in view the various Board Standing Orders under Section 58 of the Andhra Pradesh Panchayat Raj Act,1994.

For the above reasons, the writ petition is disposed of directing the District Collector, Prakasam District, to consider the report of the Mandal Revenue Inspector in the light of the observations made hereinabove and pass appropriate orders on the application made by the petitioner for assignment/alienating the land in Survey No.418/1A of Chinnaganjam village in favour of the petitioner. No costs.

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(V.V.S. RAO, J.)

Dt.23-08-2004.

Msr.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The District Collector, Prakasam District.

2. The Mandal Revenue Officer, Chinaganjam Mandal,

Prakasam District.

3. 2CCs to Government Pleader for Revenue(G), High Court of

Andhra Pradesh, Hyderabad.

4. 2CD copies

HON'BLE SRI JUSTICE V.V.S. RAO

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(Msr)